

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

UNITED STATES OF AMERICA,

Plaintiff,

v.

L.A. BAILEY,

Defendant.

No. 10-30005-DRH

ORDER

HERNDON, Chief Judge:

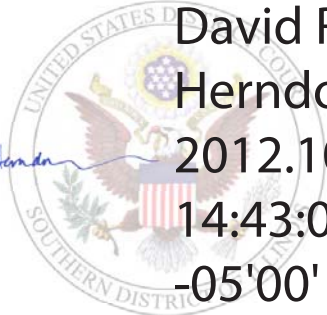
On October 22, 2012, defendant, pro se, filed a motion for modification of an imposed term of imprisonment pursuant to § 3582(c)(i) (Doc. 54). Specifically, defendant maintains that he is entitled to a sentence reduction in light of the Fair Sentencing Act and *United States v. Dorsey*, 132 S.Ct. 2321 (2012). The Court notes that the proper vehicle to obtain such relief is through a 28 U.S.C. § 2255 petition and not through 18 U.S.C. § 3582(c). See *United States v. Floore*, 09-300191-DRH (Doc. 59)(citing *United States v. Yates*, 2012 WL 3206689 *1-2 (S.D. Alabama, August 8, 2012)). Thus, the Court **DENIES** for lack of jurisdiction defendant's motion for modification of an imposed term of imprisonment pursuant to § 3582(c)(i) and finds that defendant should have filed a petition pursuant to 28 U.S.C. § 2255. To assist defendant in this matter, the Court **APPOINTS** attorney Eugene Howard to represent defendant *solely* for the Fair Sentencing Act and *Dorsey* issue.

Further, the Court **ADVISES** defendant of its intention to re-characterize his § 3582(c) motion as a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. The record reveals that Bailey has a pending 2255 petition, *Bailey v. United States*, 11-0843-DRH.¹ Therefore, the Court **DIRECTS** defendant to examine *Castro v. United States*, 540 U.S. 375 (2003) (Supreme Court held that unless the district judge has warned the prisoner that a motion will be treated as a collateral attack, and offered the opportunity to withdraw or add any other issues that would be included with a motion under § 2255 the motion does not count as the one collateral attack to each prisoner). Thus, defendant should advise the Court if he wants the Court to consider this instant argument as a supplement to his pending § 2255 petition or if he wants to withdraw the motion on or before November 12, 2012. In addition, appointed counsel should address defendant's entitlement to relief under the Fair Sentencing Act and *Dorsey*. The government shall file its response on or before November 26, 2012.

IT IS SO ORDERED.

Signed this 29th day of October, 2012.

David R.
Herndon
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The seal of the United States District Court for the Southern District of New York is visible in the background of the signature block. It features an eagle with a shield, holding an olive branch and arrows, with a constellation of stars above its head. The words "UNITED STATES DISTRICT COURT" and "SOUTHERN DISTRICT OF NEW YORK" are inscribed around the border.

**Chief Judge
United States District Court**

¹Defendant represents himself in the 2255 petition.